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IN THE

Supreme Court of the United States

OCTOBER TERM, 1933

No. 565

RUTH LOUGHRAN,
Petitioner,

v.

JOHN LOUGHRAN, JOSEPH LOUGHRAN AND CHARLES LOUGHRAN, TRUSTEES OF THE ESTATE OF DANIEL LOUGHRAN, SR.,
Respondents

BRIEF FOR RESPONDENTS IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

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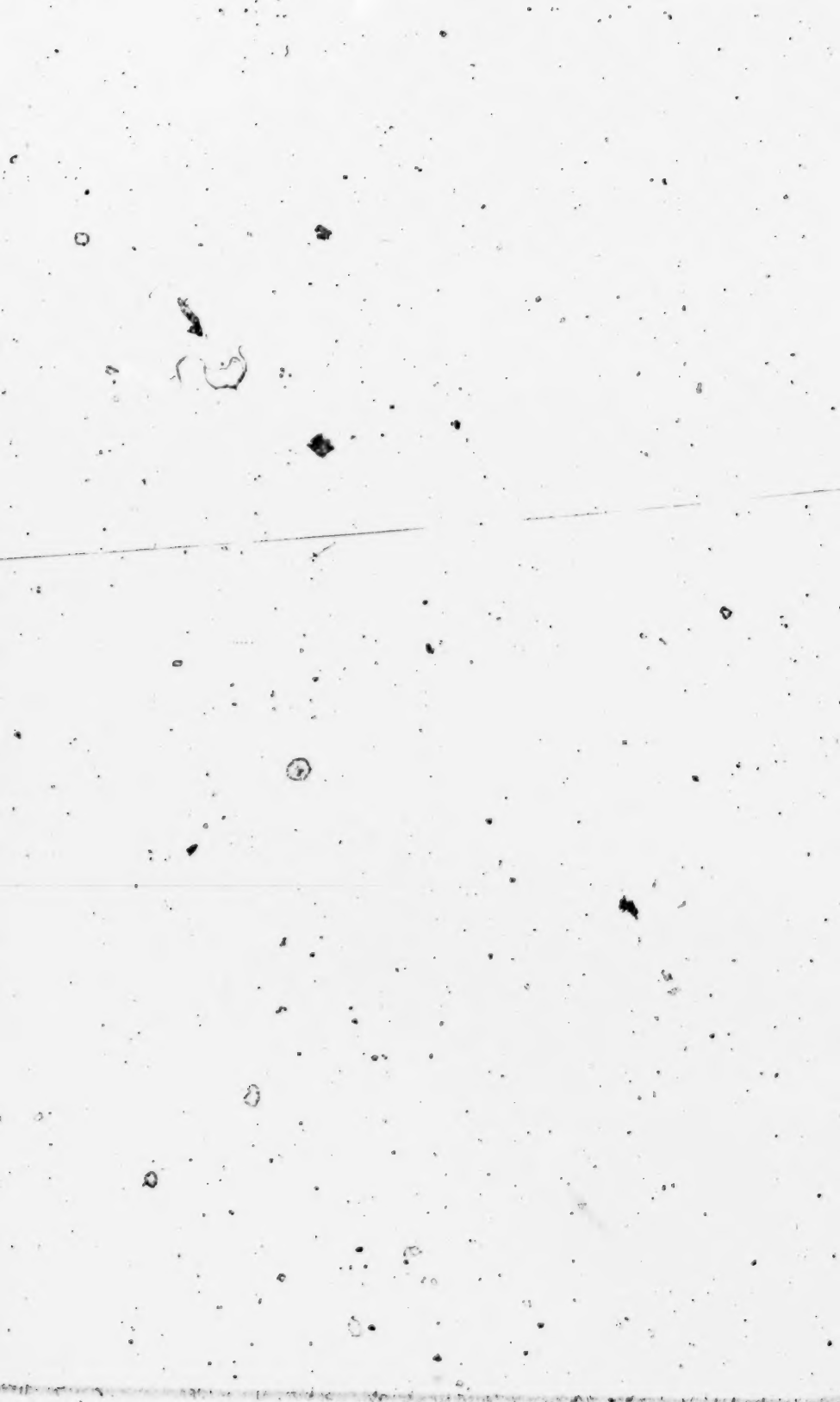

INDEX.

Subject Index.

	PAGE
Opinion Below	1
Jurisdiction	1
Statute Involved	2
Question Presented	2
The Facts	2
Argument	5
1. The Decision of the Court of Appeals of This District Construing a Federal Statute of Local Application Is Not to Be Overturned Unless Obviously Erroneous	5
2. A Court of Equity Has the Right to Deny Equitable Relief to One Who Has Deliberately Created a Situation Contrary to the Public Policy of the Lex Fori	9
3. Conclusion	12

Table of Cases.

Armstrong v. Toler, 11 Wheat. 258, 260, 6 L. Ed. 468	9
Barrett v. Failing, 111 U. S. 523, 28 L. Ed. 505, 506	5
Beard v. Beard, 65 Cal. 354, 4 Pac. 229	10
Chugus v. Penaluna, 4 Term Rep. 466	10
Collins v. Blantern, 1 Smith's Lead. Cases, pt. 2, p. 716	9
Hall v. Coppell, 7 Wall. 542, 558, 19 L. Ed. 244	9, 11
Hartford Fire Ins. Co. v. C. M. & St. P. R. Co., 175 U. S. 91, 100, 44 L. Ed. 85, 98	7
Higgins v. McCrea, 116 U. S. 671, 686, 6 Sup. Ct. 557, 29 L. Ed. 764	9, 10
Holman v. Johnson, 1 Cowp. 343	11
Hunter v. Wheate, 53 App. D. C. 206, 289 Fed. 604	9
Lanktree v. Lanktree, 42 Cal. App. 648, 183 Pac. 954, 955	10

PAGE

Montefiori v. Montefiori, 1 W. Black. 363 10
Morek v. Abel, 3 Bos. & P. 35 9
Olverson v. Olverson, 54 App. D. C. 48, 293 Fed. 1015 9
Oscanyan v. Arms Co., 103 U. S. 261, 267, 26 L. Ed. 539 ..... 9, 10
Thomas v. Woods (C. C. A. 8th, 1909), 173 Fed. 525; 26 L. R. A. (N. S.) 1180-1189 6
Van Blaricum v. Larson, 205 N. Y. 355, 98 N. E. 488, 41 L. R. A. (N. S.) 219, 222 6
Vandyck v. Hewitt, 1 East. 96 9
Vidal et al. v. Girard's Executors, 2 How. 127, 197, 11 L. Ed. 205, 234 7
Weymel v. Read, 5 Term Rep. 599 10
Wilde v. Wilde, 37 Neb. 891, 56 N. W. 724 10

Statutes.

D. C. Code (1924), Sect. 966, Page 279 ..... 2, 4
Judicial Code, Sect. 240 A, as Amended 2

In The

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October Term, 1933

No. 565

Ruth Loughran,
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v.

John Loughran, Joseph Loughran and Charles Loughran, Trustees of the Estate of Daniel Loughran, Sr.,
Respondents.

BRIEF FOR RESPONDENTS IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

I

Opinion Below

The opinion of the Court of Appeals of the District of Columbia (R. 32-35) is reported in 66 Fed. (2d) 567.

Jurisdiction

The judgment of the Court of Appeals was entered June 26, 1933, and a petition for rehearing denied

August 8, 1933. The petition for certiorari was filed October 31, 1933. While petitioner does not so state, he presumably invokes the jurisdiction of this Court under Section 240-A of the Judicial Code, as amended by the Act of February 13, 1925.

Statute Involved

Section 966, page 279, District of Columbia Code 1924, restated in Title 14, Section 63, page 143, District of Columbia Code, 1929:

> "A divorce from the bond of marriage may be granted only where one of the parties has committed adultery during the marriage; Provided, *That in such case the innocent party only may remarry,* but nothing herein contained shall prevent the remarriage of the divorced parties to each other." (Italics ours.)

Question Presented

Whether petitioner, whose first husband obtained a divorce from her in the District of Columbia on the ground of adultery, could, after marrying the named corespondent in Florida, maintain a suit in the District of Columbia to establish dower in her deceased second husband's (her paramour's) estate notwithstanding such claim is directly founded on a violation of the above quoted statute of the District of Columbia.

The Facts

On December 12, 1924, the petitioner's first husband, Henry Daye, obtained in the Supreme Court of the District of Columbia, a decree of absolute divorce from her on the grounds of her adultery with Daniel

Loughran, Jr., who was named corespondent in that cause (R. 2-18). Thirteen months later (January 16, 1926), and notwithstanding the provisions of section 966 of the District of Columbia Code (1924), allowing only the innocent party to remarry, she married Daniel Loughran, Jr., the named corespondent in the Daye suit, in Florida (R. 2-3-18). Eighteen months later, July 16, 1927, Daniel Loughran, Jr., filed a suit for divorce against petitioner in Virginia. She filed a cross-bill and on November 8, 1929, the prayers of the cross-bill were granted and petitioner was allowed a divorce a *mensa et thoro* from Daniel Loughran, Jr. (R. 13-14). September 6, 1931, Daniel Loughran, Jr., died, leaving an interest in certain real estate located in the District of Columbia, which he had disposed of by will (R. 5).

Petitioner filed suit for dower, averring (R. 9-10) that under the Code of Laws of the District of Columbia she was entitled to have and receive as the widow of Daniel Loughran, Jr., a one-third part of the net rent, issues and profits of all real estate or interest therein of which Daniel Loughran, Jr., was seized at the time of his death. The respondents averred in their answer (R. 24-25) that she had neither legal right nor equity in her complant, and was not entitled to the extraordinary relief sought. They averred that prior to her marriage, as alleged, to Daniel Loughran, Jr., she was and had been for some years theretofore the lawful wife of one Henry Daye and that he, as the husband of this complainant, then known as Ruth Daye, filed in the Supreme Court of the District of Columbia, his petition for an absolute divorce from this complainant, in Equity cause No. 43,202. Respondents made part of their answer to the bill of complaint, the petition, answer and decree in said cause aforesaid as if

fully set out (R. 25). Respondents further said that in said cause Daniel Loughran, Jr., was named corespondent and that on December 12, 1924, the Court decreed a final and absolute divorce to Henry Daye against and from his then wife and petitioner herein, Ruth Daye, by reason of her adultery with the corespondent Daniel Loughran, Jr. Respondents further averred that by, under and in accordance with Section 966 of the Code of Laws of the District of Columbia this complainant was denied the right of remarriage (R. 25). They stated that petitioner directly contrary to and in violation of the terms of the statute married Daniel Loughran, Jr., the corespondent in the proceedings hereinbefore named. They alleged that having openly and in utter disregard of the prohibition contained in said statute violated the terms thereof, she cannot now return to this jurisdiction and the Supreme Court of the District of Columbia and make application for relief with respect to the very situation and relationship which she could and did create only in direct violation of the prohibitory mandate of the statute, in full force and effect in this District and which the Court was bound to respect and administer. Respondents averred the declaration by the Congress of the United States in Section 966 was a legislative declaration of a general public policy to govern in this District and which should govern and control the conduct of those found guilty of adultery in the courts thereof. Respondents averred that petitioner was without right to ask or expect to receive from the courts of the District of Columbia, and especially in equity, the extraordinary relief and assistance which she prayed in her said amended bill, and that she should be left with respect to that situation and relationship, which she created by violation of the law of this District,

where her own misconduct in violating said law had placed her (R. 25).

Inasmuch as the cause was heard upon amended bill and answer, the only question before the trial court and the Court of Appeals was the validity of respondents' contention as set forth in paragraph 15 of the answer, and as set forth on pages 24 and 25 of the record. The Court of Appeals unanimously ruled such contention to be the sound public policy of the District of Columbia. Petition to this Court for certiorari followed.

ARGUMENT

I

The Decision of the Court of Appeals of This District Construing a Federal Statute of Local Application Is Not to Be Overturned Unless Obviously Erroneous.

The question involved herein is purely local. We invite the Court's attention to the allegation of petitioner (R. 2) that she is a resident of the District of Columbia and further that the property herein involved in which she seeks a dower interest is situate in the District of Columbia. This Court announced in *Barrett* v. *Failing*, 111 U. S. 523, 28 L. Ed. 505, 506, that the law of the place in which the real estate is located is controlling.

> "Whether a statute of one state, securing or denying the right of dower in case of divorce extends to a divorce in the Court of another state having jurisdiction of the cause and the parties depends very much *upon the terms of the statute and upon its interpretation by the courts of the*

state by the legislation of which it is passed and in which the land is situated.''

To the same effect in *Thomas* v. *Woods* (C. C. A. 8th, 1909) 173 Fed. 525, 26 L. R. A. (N. S.) 1180-1189, wherein the Court said:

> "That right (dower) is fixed by the laws of the state in which the property is situated."

In *Van Blaricum* v. *Larson,* 205 N. Y. 355, 98 N. E. 488, 41 L. R. A. (N. S.) 219, 222, the New York Court of Appeals said:

> "Her right to dower in lands here, of course, *is a matter to be determined by the courts of this jurisdiction.''*

The Court of Appeals of the District of Columbia has announced the public policy of the District of Columbia relative to the rights of dower to those who violate the statutes of the District of Columbia and ignore the mandate of its courts, *viz.,* that the guilty party in a divorce proceeding shall not remarry.

The Court of Appeals correctly announced the law when it said (66 F. [2d] 568):

> "The single question for determination here is whether or not the plaintiff is entitled to her dower interest in the estate of Daniel Loughran, Jr. We are of the opinion that the decree of absolute divorce obtained by her first husband, Daye, on the ground of adultery bars the right of plaintiff to recover in this action. Section 966, D. C. Code 1924 (D. C. Code 1929, T. 14, Sect. 63) provides as follows: 'A divorce from the bond of marriage may be granted only where one of the parties has committed adultery during the marriage: Provided, *that in such case the innocent party only*

may remarry, but nothing herein contained shall prevent the remarriage of the divorced parties to each other.' It is the special duty of courts to discourage infractions of the laws and *fixed policies of the particular division of the nationdl domain to which they are accredited,* and they cannot aid litigants in securing the benefit of illegal transactions or illegal acts, without bringing such laws and policies into contempt. Judicial tribunals may well decline, therefore, to lend their support to claims which are directly and immediately founded upon a violation of the statutes of their territorial jurisdiction.

"We are of the opinion that a husband or wife, divorced on the ground of adultery, who defies the ban of Section 966, should not be permitted to take advantage of his or her own wrong, and should be left as found in the relation unlawfully undertaken."

Much argument in petitioner's brief is devoted to the claim that the public policy of the state cannot be declared by judicial decision. The contrary is the law. See *Vidal et al.* v. *Girard's Executors,* 2 How. 127, 197, 11 L. Ed. 205, 234; *Hartford Fire Ins. Co.* v. *C. M. & St. P. R. Co.,* 175 U. S. 91, 100, 44 L. Ed. 85, 98. The question, however, is beside the point in the present case as obviously it is not the decision of the Court of Appeals of the District of Columbia which establishes the public policy of this jurisdiction that after a divorce only the innocent party may remarry, but a statute plain in its terms enacted by Congress. Certainly it was competent for the Court of Appeals of this jurisdiction to construe that statute and determine the effect intended by Congress. Applying the statute to a marriage contracted by the guilty party outside the District of Columbia as well as to

a marriage contracted within the District of Columbia is not an unreasonable construction of the statute. This court can take judicial notice of the fact that the District of Columbia is less than ten miles square. Unless the statute applies to marriages contracted outside of the District of Columbia as well as inside the District, the statute would have little or no effect inasmuch as the guilty party could evade it by a street-car ride to Virginia on the one side or Maryland on the other. Dower being the result of and an incident to marriage and being governed by the law of the state wherein the property is located, under the authorities already cited, it was certainly competent for Congress to say what persons are dowable and as a result of what marriages, no matter where the marriage was contracted. This is all Congress has done in this case.

The argument of petitioner that a marriage valid where entered into is valid everywhere is of no pertinency in the present case. Assuming it to be true, for the sake of argument, it does not follow that an incident to marriage such as dower may not be given or withheld in a given locality according to terms or conditions fixed by the local legislature. Thus Congress acting as the local legislature for the District could provide a classification of marriages as to some of which it would grant the right of dower in the District of Columbia, as to others of which it would deny it. This is what Congress has done in the present case; the statute as interpreted has denied the right of dower to the guilty party in a divorce suit based on adultery. This in no way violates the so-called axiom that a marriage valid where entered into is valid everywhere, even assuming that this saying is as ironclad as contended for by petitioner.

II

A Court of Equity Has the Right to Deny Equitable Relief to One Who Has Deliberately Created a Situation Contrary to the Public Policy of the Lex Fori.

Petitioner herein seeks the remedy of the District of Columbia Court, whose decree she has flouted and ignored. She based her claim for dower upon a marriage prohibited by the statutes of the jurisdiction in which she seeks relief.

The principle which respondents advance and which was adopted by the lower court is that no one can enter the courts of the District of Columbia and seek the assistance of the statutes of the District of Columbia relative to dower upon a status born as a result of the contravention of the laws of the District of Columbia by petitioner.

Ample authority for this position is found in the following cases:

Armstrong v. *Toler*, 11 Wheat. 258, 260, 6 L. Ed. 468;

Hall v. *Coppell*, 7 Wall. 542, 558, 19 L. Ed. 244.

Oscanyan v. *Arms Co.*, 103 U. S. 261, 267, 26 L. Ed. 539;

Higgins v. *McCrea*, 116 U. S. 671, 686, 6 Sup. Ct. 557, 29 L. Ed. 764;

Hunter v. *Wheate*, 53 App. D. C. 206, 289 Fed. 604;

Olverson v. *Olverson*, 54 App. D. C. 48, 293 Fed. 1015;

Morck v. *Abel*, 3 Bos. & P. 35;

Collins v. *Blantern*, 1 Smith's Lead. Cases, pt. 2, p. 716;

Vandyck v. *Hewitt*, 1 East. 96;

Clugas v. *Penaluna*, 4 Term Rep. 466;
Weymel v. *Read*, 5 Term Rep. 599;
Montefiori v. *Montefiori*, 1 W. Black. 363;
Wilde v. *Wilde*, 37 Neb. 891, 56 N. W. 724;
Lanktree v. *Lanktree*, 42 Cal. App. 648, 183 Pac. 954, 955;
Beard v. *Beard*, 65 Cal. 354, 4 Pac. 229;

The language of this court in *Higgins* v. *McCrea*, *supra*, is peculiarly pertinent here:

> "If from the plaintiff's own stating, or otherwise, the cause of action appear to arise ex turpi causa, or the transgression of a positive law of the country, then the court says he has no right to be assisted. It is upon that ground the court goes, not for the sake of the defendant but because they will not lend their aid to such a plaintiff."

In *Oscanyan* v. *Winchester Co.*, 13 Otto 261, 26 L. Ed. 539, 543, this court said:

> "The defense is allowed, not for the sake of the defendant *but of the law itself*. The principle is indispensable to the purity of its administration. *It will not enforce what it has forbidden and denounced*. The maxim, ex dolo malo non oritur actio, is limited by no such qualification. The proposition to the contrary strikes us as hardly worthy of serious refutation. Whenever the illegality appears, whether the evidence comes from one side or the other, the disclosure is fatal to the case. No consent of the defendant can neutralize its effect. A stipulation in the most solemn form, to waive the objection, would be tainted with the vice of the original contract, and void for the same reasons. Wherever the contamination reaches it destroys. *The principle to be extracted from all*

the cases is, that the law will not lend its support to a claim founded upon its violation.'' See, also, *Holman* v. *Johnson*, 1 Cowp. 343. (Italics ours.)

No principle seems to be better settled than that no court will lend its aid to one who founds his cause of action upon an illegal act. The petitioner's position was created by reason of her violation of Section 966 of the District of Columbia Code (1924), a positive law of the District of Columbia. Upon that ground alone the court refused to lend to her its aid. The status she created was prohibited by law.

In *Hall* v. *Coppell*, 7 Wallace 542, 19 L. R. A. 248, this Court said:

> "The law will not lend its support to a claim founded upon its violation."

Considering these cases, it is submitted that the Court below was correct when it said (R. 34):

> "It is the special duty of courts to discourage infractions of the laws *and fixed policies of the particular division of the national domain to which they are accredited*, and they cannot aid litigants in securing the benefit of illegal transactions or illegal acts, without bringing such laws and policies into contempt. Judicial tribunals may well decline, therefore, to lend their support to claims which are directly and immediately founded upon a violation of the statutes of their territorial jurisdiction. * * * We are of the opinion that a husband or wife, divorced on the ground of adultery, who defies the ban of Section 966, should not be permitted to take advantage of his or her own wrong, and should be left as found in the relation unlawfully undertaken." (Italics ours.)

III

Conclusion

The laws of the District of Columbia were correctly interpreted by the Court of Appeals of the District of Columbia, consonant with the decisions of this Court. The case was correctly decided below. The petition should be denied.

Respectfully submitted,

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